

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST )	
FOR REVIEW BY: )	CHARGE NO.: 2009CF0390
JOSE REYNOZO )	EEOC NO.: 21BA82796
)	ALS NO.: 09-0674
Petitioner. )	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Sakhawat Hussain, M.D., Spencer Leak, Sr., and Rozanne Ronen presiding, upon Jose Reynozo's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")<sup>1</sup> of Charge No. 2009CF0390; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

**LACK OF SUBSTANTIAL EVIDENCE**

In support of which determination the Commission states the following findings of fact and reasons:

1. The Petitioner filed a charge of discrimination with the Respondent on August 12, 2008. The Petitioner alleged in his charge that the United Steelworkers Local 9777 ("Union"), failed to represent him because of his ancestry, Hispanic (Count A), and his national origin, Mexico (Count B), in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On October 21, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On November 23, 2009, the Petitioner filed a timely Request.
2. The Petitioner was employed by the Bull Moose Tube Company ("Employer") as an Assistant Mill Operator. On April 11, 2008, the Employer indefinitely suspended the Petitioner because the Petitioner allegedly violated the Employer's Safety and Conduct Rules. Specifically, the Petitioner was accused of sticking his hand in a moving mill and threatening a co-worker.
3. On April 14, 2008, the Employer conducted a disciplinary hearing concerning the Petitioner's alleged rule violations. A representative from the Union was present on behalf of the Petitioner.

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<sup>1</sup> In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

4. On April 22, 2008, the Union filed a grievance on behalf of the Petitioner. On May 5, 2008, the Union appeared on behalf of the Petitioner at a Third Step grievance hearing. On May 19, 2008, the Employer discharged the Petitioner.
5. On or about June 19, 2008, the Employer notified the Union that it would not reconsider its decision to discharge the Petitioner. Thereafter, the Union notified the Petitioner that it would not arbitrate the Petitioner's grievance
6. Pursuant to the Collective Bargaining Agreement between the Union and the Employer, the Employer's "third step" answer to a grievance was final unless the Union decided to arbitrate the grievance. In this case, the Employer's third step answer was that it would not rehire the Petitioner. This decision became final once the Union declined to arbitrate the grievance any further.
7. The Union stated it declined to arbitrate the Petitioner's grievance because the Petitioner had threatened his co-worker. During the Respondent's investigation, the Petitioner stated that the Union told him it would not arbitrate his grievance because it would cost too much money.
8. In his charge, the Petitioner alleged the Union refused to arbitrate his grievance because of his ancestry and national origin. In his Request, the Petitioner also argues that he was unable to fully participate in the April 14, 2008, disciplinary proceedings because he neither speaks nor understands English, and there were no Spanish-speaking employees or Union representatives present.
9. In its Response, the Respondent requests that the Commission sustain the dismissal of the Petitioner's charge for lack of substantial evidence. The Respondent argues there was no evidence the Union was required to arbitrate the Petitioner's grievance beyond the "third step." The Respondent found no substantial evidence the Union's stated reason for declining to arbitrate the Petitioner's grievance was a pretext for discrimination.

## **Conclusion**

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747 (March 7, 1995), 1995 WL 793258 (Ill.Hum.Rts.Com.)

The Commission finds that the Union has articulated a non-discriminatory reason for not proceeding to arbitrate the grievance it filed on behalf of the Petitioner. The Union represented the Petitioner up to the third step of the grievance process. After the Employer decided that it would not

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reconsider the discharge of the Petitioner, the Union considered the cost of proceeding with the grievance process as well as weighing the evidence against the Petitioner. Based on the facts of the Petitioner's case, the Union ceased the grievance process. There is no substantial evidence that the Union's stated reason for declining to arbitrate the Petitioner's grievance was a pretext for ancestry or national origin discrimination.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

**THEREFORE, IT IS HEREBY ORDERED THAT:**

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and United Steelworkers Local 9777, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

**STATE OF ILLINOIS**

**HUMAN RIGHTS COMMISSION**

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**Entered this 26<sup>th</sup> day of May 2010**

Commissioner Sakhawat Hussain, M.D.

Commissioner Spencer Leak, Sr.

Commissioner Rozanne Ronen